

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
James Cable, LLC)	CSR-7216-Z
)	
Request for Waiver of Section 76.1204(a)(1) of the)	
Commission's Rules)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: August 25, 2011

Released: August 25, 2011

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Order, we grant in part and deny in part James Cable, LLC's ("James Cable" or "Petitioner") request for an extension of the waiver of the ban on integrated set-top boxes with respect to the Motorola DCT-700, DCT-2500, DCT-2000, DSR-410 and DSR-470. As described below, we permit Petitioner a six-month extension of its limited waiver starting from the release date of this Order.¹

II. BACKGROUND

A. Section 629 of the Act

2. Congress directed the Commission to adopt regulations to assure the commercial availability of navigation devices such as set top boxes more than ten years ago as part of the Telecommunications Act of 1996.² The Commission implemented this directive in 1998 through the adoption of the "integration ban," which ultimately established July 1, 2007 as the date after which cable operators were prohibited from placing into service any new navigation device that performed both

¹ 47 C.F.R. § 76.1204(a)(1). The separation of the security element from the basic navigation device required by this rule is referred to as the "integration ban."

² See Section 629(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 549(a) (requiring the FCC "to adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor"); *see also* Telecommunications Act of 1996, Pub. L. No. 104-104, § 304, 110 Stat. 56, 125-126 (1996).

conditional access and other functions.³ The purpose of the integration ban is to assure reliance by both cable operators and consumer electronics manufacturers on a common separated security solution.⁴ This “common reliance” is necessary to achieve the broader goal of Section 629 – *i.e.*, to allow consumers the option of purchasing navigation devices from sources other than their MVPD.⁵ In limited circumstances operators may be eligible for waiver of the integration ban.⁶

3. Last year the Commission adopted rules to improve the CableCARD regime and further the goals of Section 629.⁷ Most importantly for the purposes of the instant case, the Commission adopted a rule to promote the cable industry’s transition to all-digital networks by exempting all one-way set-top boxes without recording functionality from the integration ban.⁸ The Commission reasoned that this exemption would lower the cost of the integration ban and encourage cable operators to transition their services to digital: “Allowing operators to deploy one-way devices with integrated security will help lower the costs of set-top box rentals to subscribers and allow operators to dedicate more of their spectrum to broadband without undermining the effectiveness of the integration ban.”⁹

B. Request for Waiver

4. On March 16, 2011, James Cable submitted a request for extension of a limited waiver of the integration ban¹⁰ as established in the *Financial Hardship Order*,¹¹ which was the Media Bureau’s

³ See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775, 14803, ¶ 69 (1998) (“*First Report and Order*”) (adopting Section 76.1204 of the Commission’s rules, subsection (a)(1) of which (1) required multichannel video programming distributors (“MVPDs”) to make available by July 1, 2000 a security element separate from the basic navigation device (*i.e.*, the CableCARD), and, in its original form, (2) prohibited MVPDs covered by this subsection from “plac[ing] in service new navigation devices ... that perform both conditional access and other functions in a single integrated device” after January 1, 2005); see also 47 C.F.R. § 76.1204(a)(1) (1998).

⁴ See *Cablevision Systems Corporation’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 220, 226, ¶ 19 (2007) (citing the *2005 Deferral Order*, 20 FCC Rcd at 6809, ¶ 30) (explaining why the Commission “require[d] MVPDs and consumer electronics manufacturers to rely upon identical separated security with regard to hardware-based conditional access solutions”).

⁵ See S. REP. 104-230, at 181 (1996) (Conf. Rep.). See also *Bellsouth Interactive Media Services, LLC*, 19 FCC Rcd 15607, 15608, ¶ 2 (2004). As the Bureau noted, Congress characterized the transition to competition in navigation devices as an important goal, stating that “[c]ompetition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher quality.”

⁶ For example, Section 629(c) provides that the Commission shall grant a waiver of its regulations implementing Section 629(a) upon an appropriate showing that such waiver is necessary to assist the development or introduction of new or improved services. 47 U.S.C § 549(c). Furthermore, petitioners who have shown good cause have received waivers of the integration ban pursuant to Sections 1.3 and 76.7 of the Commission’s rules. See *Charter Communications, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 8557, 8564-5, ¶¶ 18-19 (2007).

⁷ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 25 FCC Rcd 14657 (2010) (“*Third Report and Order and Order on Reconsideration*”). These new rules went into effect on August 8, 2011.

⁸ *Id.* at 14681, ¶ 49.

⁹ *Id.*

¹⁰ James Cable, LLC’s Request for Waiver of 47 C.F.R. § 76.1204(a)(1), Report of Updated Financial Information, CSR 7216-Z (filed March 16, 2011) (“2011 Extension Request”); *Id.*

initial order granting James Cable a limited waiver of the integration ban. In the *Financial Hardship Order*, the Bureau stated that James Cable could seek an extension if it continued to face continuing, non-speculative financial difficulties.¹² James Cable has previously requested three extensions, which the Media Bureau has granted.¹³ This is James Cable's fourth request for extension based on financial hardship.¹⁴

III. DISCUSSION

5. In this Order, we grant in part, and deny in part, James Cable's waiver request. Although we find that Petitioner has sufficiently demonstrated its on-going financial hardship, we believe that, given the Commission's new rules that recently went into effect, there is a low-cost set-top box option available to Petitioner that it can implement in keeping with its financial situation. Accordingly, we decline to extend the waiver for another year on the grounds of on-going financial hardship. Instead, we partially grant the requested relief by extending the waiver for six months from the release date of this Order. We believe that this amount of time is appropriate in order to give Petitioner adequate time to purchase and receive these low-cost set top boxes.

6. In reaching this conclusion, we recognize that Petitioner has documented financial hardship.¹⁵ However, under the rules adopted in the *Third Report and Order and Order on Reconsideration*, cable operators are now allowed to deploy low-cost, one-way, non-recording set-top boxes with integrated security.¹⁶ This exemption from the integration ban should decrease significantly the financial burden of integration ban compliance. Although we recognize that the set-top boxes at issue in the instant waiver – the Motorola DCT-700, DCT-2500, DCT-2000, DSR-410 and DSR-470 – are two-way boxes, we expect that the integration ban exemption for one-way set-top boxes will, allow James Cable to deploy set-top boxes that comply with our rules without “present[ing] a financial burden so great as to drive the Petitioner[] out of business.”¹⁷

¹¹ *Great Plains Cable Television, Inc. et al's Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 13414 (2007) (“*Financial Hardship Order*”).

¹² *Id.* at 13427, ¶ 40.

¹³ *James Cable, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 24 FCC Rcd 2439 (2009); *James Cable, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 24 FCC Rcd 9269 (2009); *James Cable, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 25 FCC Rcd 9129 (2010) (“*2010 Extension Order*”).

¹⁴ *James Cable, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 24 FCC Rcd 2439 (2009); *James Cable, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 24 FCC Rcd 9269 (2009); *James Cable, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 25 FCC Rcd 9129 (2010) (“*2010 Extension Order*”).

¹⁵ While the company's financial situation improved slightly from 2009 to 2010, James Cable continues to carry a sizeable debt and a large negative cash flow; based on its financial statements, James Cable appears to be on the path to stability. 2011 Extension Request at Exhibit 1; Grant Thornton LLP, *Financial Statements and Report of Independent Certified Public Accountants: James Cable Holdings, LLC and Subsidiary*, Dec. 2009 and Dec. 2010.

¹⁶ *Third Report and Order and Order on Reconsideration*, 25 FCC Rcd at 14679-14682, 14701, ¶¶ 45-51 (2010) (amending Section 76.1204 of the Commission's rules). These rules became effective on August 8, 2011. See *Media Bureau Announces Effective Dates of CableCARD Rules*, DA 11-1250 (rel. July 26, 2011).

¹⁷ *Financial Hardship Order*, 22 FCC Rcd at 13426, ¶ 40.

7. Further, we note that last year the Media Bureau granted James Cable's request for waiver of the integration ban for all refurbished set-top boxes.¹⁸ Accordingly, we believe that, given James Cable's ability to use refurbished boxes and, now, low-cost one-way set top boxes, there are ways for Petitioner to comply with our rules absent subsequent waivers. Nonetheless, given James Cable's financial hardship and our understanding that set-top box manufacturers may prioritize set-top box orders from larger cable operators,¹⁹ we conclude that a six-month waiver of the integration ban will provide James Cable with the appropriate time to come into compliance with our rules without creating an excessive financial burden or causing service disruption. Specifically, we find that a limited, six-month extension of the waiver would help the company's financial security and allow it to continue providing telecommunications services to its otherwise underserved rural coverage area.²⁰ Thus, we conclude that continuing Petitioner's waiver of the integration ban for a limited period of six months for the Motorola DCT-700, DCT-2500, DCT-2000, DSR-410 and DSR-470 is in the public interest,²¹ and that Petitioner has met the standard for waiver under the Commission's rules.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Sections 1.3 and 76.7 of the Commission's rules, 47 C.F.R. §§ 1.3 & 76.7, the request for waiver of Section 76.1204(a)(1) of the Commission's rules, 47 C.F.R. § 76.1204(a)(1), filed by James Communications, LLC, **IS GRANTED, IN PART**, for six months from the date this Order is released.

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

¹⁸ 2010 Extension Order, 25 FCC Rcd at 9133-34, ¶¶ 10-11.

¹⁹ *Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 209, 212-213, ¶ 10 (2007). *GCI Cable, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 8576, 8582, ¶ 18 (2007).

²⁰ 2011 Extension Request at 2 ("James Cable's systems still need substantial capital investment to be able to offer Video on Demand (VOD), competitive telephone services, faster broadband, and other services.").

²¹ These are the devices for which James Cable originally sought waiver in 2007 and does not extend to any devices which have recording capability. See James Cable, LLC's Request for Waiver of 47 C.F.R. § 76.1204(a)(1), CSR-7216-Z (filed May 11, 2007).